

REMARKS / ARGUMENTS

By this amendment, claims 18, 19, 30 and 31 are amended. No new matter has been introduced. Claims 1-3, 5, 7-10, and 12-32 are pending. The Examiner has allowed claims 20-29. Claim 13 was indicated by the Examiner to be allowable if rewritten in independent form. In light of same, and in light of the following remarks, allowance of all pending claims is respectfully requested.

Rejections under 35 U.S.C. § 112

Claims 18, 19, 30, and 31 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Applicant thanks the Examiner for the helpful suggestions, and has amended claims 18, 19, 30 and 31 for clarity.

Rejections under 35 U.S.C. § 102

Claims 1, 2, 3, 5, 18, and 19 stand rejected under 35 U.S.C. § 102(b) as anticipated by Marlow et al., United States Patent No. 5,868,694.

Marlow reports a lower back support system having a support frame and support belt. The support frame is an open, rectangular frame having a base rod with two swivel arms. The base is positioned to grip a seat via the swivel arms. Only a single base is described by the Marlow patent.

As set forth by relevant case law and the Manual of Patent Examining Procedure, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegall Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. Moreover, the identical invention must be shown in as complete detail as is contained in the claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The Applicant claims, as defined by independent claim 1, a system for appendage elevation comprising: a first base; a second base adapted to be supported between opposing surfaces; a support assembly having a first end and a second end; a hook, operably attached near said first end of said support assembly; a connector having a first end and a second end, said first end of said connector being operably attached to said second end of said support assembly, and

said second end of said connector being removably insertable into said first base and said second base; a sling assembly; and a means for removably attaching said sling assembly to said hook.

The Examiner attempts to show that Marlow teaches Applicant's claimed device, including both a first base and a second base for the appendage elevation system. In doing so, the Examiner relies on Figure 3 of the Marlow patent. However, as shown in Figure 3 of Marlow, and described in the Specification of same, Marlow illustrates an individual using a lower back support apparatus wherein the support frame is positioned to grip a seat via swivel arms (24) connected to a base rod (22). *See Fig. 3 of Marlow for reference number correlation.* The swivel arms and base rod appear as a single unit and the seat identified is provided for illustrative purposes only to demonstrate where the Marlow device would be located when in use. Marlow does not teach or suggest an appendage elevation system as claimed, having a first base, a second base adapted to be supported between opposing surfaces, and a connector that is removably insertable into the first base and the second base. Accordingly, the Examiner has not shown that Marlow teaches each and every element of claim 1, nor has the Examiner shown an appendage elevation system in sufficient detail to anticipate claim 1. Claims 2, 3, 5, 18 and 19 are each dependent upon claim 1 and contain all the limitations of claim 1 therein. As claim 1 is not anticipated by Marlow, claims 2, 3, 5, 18 and 19 are not anticipated by Marlow. Accordingly, Applicant respectfully requests the Examiner withdraw the 35 U.S.C. § 102(b) rejection.

Rejections under 35 U.S.C. § 103

Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as obvious over Marlow in view of Treutellaar (U.S. Patent No. 3,068,859) or Price (U.S. Patent No. 4,711,596).

As stated above, the instant invention claims, in claim 1, a system for appendage elevation comprising a first base; a second base adapted to be supported between opposing surfaces; a support assembly with a first end and second end; a hook operably attached near the first end of the support assembly; a connector with a first end and second end, the first end of the connector operably attached to the second end of the support assembly, and the second end of the connector being removably insertable into the first base and the second base; a sling assembly; and a means for removably attaching the sling assembly to the hook. Claims 7-10 depend from claim 1 and include all of these limitations therein.

The teachings of Marlow are discussed above.

Treutellaar reports a therapeutic traction device for application to a part of the body. The device disclosed contains a substantially U-shaped base support member with a cross bar extending between the ends of same; and a vertically extending, telescopic support bar, having attached to the top thereto an arm for supporting the traction device. Treutellaar discloses only a single base member.

Price reports a portable intravenous pole in which a victim lays on top of a base member to support an intravenous delivery system. The pole includes a single base disposed perpendicular and fixedly coupled to one of the segments at its first end adjacent to the bottom of the pole. The base contains a pair of flat, elongated legs.

In determining obviousness under 35 U.S.C. § 103(a), the Examiner must consider the claimed invention as a whole. “The question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” MPEP § 2141.02 (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983)). In addition, the prior art must teach or suggest all the claim limitations. MPEP § 2142; 2143.

Applicant respectfully submits that the cited references, individually or in combination, do not teach nor suggest all of the claim limitations. Specifically, the cited references do not teach an appendage elevation system having a first base, a second base adapted to be supported between opposing surfaces, and a connector that is removably insertable into the first base and the second base. As stated previously by Applicant, these claimed features allow the interchange of the first base and second base with the support assembly of the appendage elevation system. The interchange of bases provides for unlimited vertical adjustment of the support assembly. In addition, it does not confine the patient to a single location, such as a chair or bed. In other words, multiple settings are provided by Applicant’s single system.

With regard to the first and second base, as described above, none of the references teach or suggest an appendage elevation system having more than one base. Furthermore, none of the cited references teaches or suggests the capability of alternating an appendage elevation system from one base to another as claimed in the present application. For instance, Marlow, as discussed above, illustrates an individual using a lower back support apparatus wherein the support frame is positioned to grip a seat via swivel arms and a base rod. The swivel arms and base rod appear as a single unit. Marlow does not teach or suggest an appendage elevation

system as claimed, having a first base, a second base adapted to be supported between opposing surfaces, and a connector that is removably insertable into the first base and the second base.

Further, Marlow cannot be combined with any of the additional references to show the combination claimed by Applicant. The cited references do not disclose more than one base or the capability of interchange between same. The device disclosed by Treutellaar contains a substantially U-shaped base support member with a cross bar extending between the ends of same. Treutellaar discloses only a single base member. Similarly, Price reports an intravenous pole that includes a single base disposed perpendicular and fixedly coupled to one of the segments at its first end adjacent to the bottom of the pole. These references, considered as a whole, do not teach or suggest an appendage elevation system containing two interchangeable bases. Thus, these references, alone or in combination, do not teach or suggest all the claimed limitations. Moreover, no motivation in these references, or in the art exists to suggest the desirability of the combination of references presented by the Examiner to show Applicant's claimed system is obvious.

Claims 14-17 stand rejected under 35 U.S.C. § 103(a) as obvious over Marlow in view of Blatt (U.S. Patent No. 4,232,664) or Molina (U.S. Patent No. 5,957,135).

The teachings of Marlow are discussed above.

Blatt reports a sling consisting of a flexible, L-shaped envelope, a shoulder strap, a rear support assembly for coupling the strap to the envelope, and a forward support assembly for coupling the strap to the envelope. The strap of Blatt can be formed into a large loop and hooked over a separate support mounted on a bed or a chair.

Molina reports a surgical support apparatus having a sling and a mounting assembly. The Molina device consists of a single base member that clamps onto an operating table.

For the reasons discussed above, Marlow does not teach or suggest all of the features of Applicant's claimed invention as defined by claim 1. Claims 14 through 17 depend from claim 1 and include all the limitations of claim 1 therein. Therefore, Marlow does not teach or suggest all the limitations of claims 14-17. Further, Marlow cannot be combined with the cited references to show all such limitations. As described above, Blatt reports a sling consisting of a flexible, L-shaped envelope, a shoulder strap, a rear support assembly for coupling the strap to the envelope, and a forward support assembly for coupling the strap to the envelope. Molina teaches a single base member that clamps onto an operating table. Neither reference teaches or

suggests an appendage elevation system containing two interchangeable bases as defined by Applicant's claims. Accordingly, Marlow, alone or in combination with the cited references does not teach or suggest claims 14-17.

Similarly, Claims 12 and 32 stand rejected under 35 U.S.C. § 103(a) as obvious over Marlow in view of Spencer (U.S. Patent No. 6,095,714).

Claim 32 (and dependent claim 12) claims, among other things, a first base, a second base adapted to be supported between opposing surfaces, and a connector removably insertable into the first base and the second base.

The teachings of Marlow are discussed above.

Spencer reports a latching joint for telescoping tubes incorporating two telescoping cylindrical members, referred to as rings, one being positioned at least partially within the other. Spencer does not teach an appendage elevation system or such a system incorporating more than one base.

As discussed above, Marlow does not teach or suggest an appendage elevation system containing two interchangeable bases as defined by Applicant's claims. Spencer reports a latching joint for telescoping tubes incorporating two telescoping cylindrical members, not an appendage elevation system, or same having interchangeable bases. Thus, Spencer cannot be combined with Marlow to demonstrate or suggest all the features claimed by Applicant in claims 12 and 32.

Taken together, Applicant respectfully submits that an appendage elevation system of the structure claimed by the instant application, containing a first base, a second base adapted to be supported between opposing surfaces, and a connector that is removably insertable into the first base and the second base, are novel properties not disclosed by the prior art references, and that the independent claims 1 and 32, and the claims dependent thereon, rejected by the Examiner, are allowable over the cited prior art references. Accordingly, withdrawal of the 35 U.S.C. § 103 rejections is respectfully requested.

Objection to Claim 13

The Examiner has objected to claim 13 as being dependent upon a rejected base claim. Claim 13 depends from claim 1. As indicated above, claim 1 is not anticipated or suggested by any of the cited references. Therefore, claim 1 should be allowable. As claim 1 is allowable, claim 13 should also be allowable. Accordingly, Applicant respectfully requests that the Examiner withdraw the objection to claim 13.

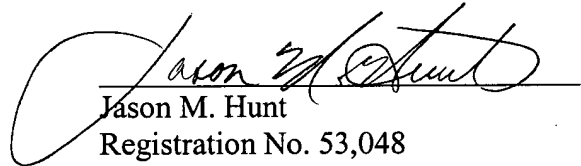
CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that this application is in condition for allowance and such action is earnestly solicited. However, should the Examiner have any further point of objection, the Examiner is urged to contact the undersigned so that a mutual agreement with respect to claim limitations can be reached.

Respectfully submitted,

Date: _____

6/23/04



Jason M. Hunt
Registration No. 53,048
Dorsey & Whitney LLP
801 Grand Ave., Suite 3900
Des Moines, IA 50309
Telephone: (515) 283-1000
Fax: (515) 283-1060

ATTORNEY FOR APPLICANT